IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4082 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N D MAJEETHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4082 of 1987

MR AK CLERK for Petitioner No. 1

MR. B.Y. MANKAD, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/03/2002

ORAL JUDGEMENT

1. N.D. Majeethia-petitioner has filed this petition under Article 226 of the Constitution of India

with a prayer that this court may direct the respondent No. 1 State of Gujarat through Secretary, Education, respondent No. 2 the Secretary to Government of Gujarat, Education Department and respondent No. 3 Director of Technical Education to give the petitioner pay scale of Rs. 1500-2500 with effect from 1.11.1978 and to give to the petitioner all consequential benefits like arrears of difference in salary, fixation of pension and other allowances etc.

2. This petition was filed on 17.8.1987 and on 18.8.1987 this court issued notice and ultimately the same was admitted on 25.6.1988. The matter is placed before me for hearing today. Mr. Abilash Clerk, learned advocate for the petitioner has pointed out the facts giving rise to this petition as under:

2.1 The petitioner joined the service of erstwhile State of Saurashtra in the Department of Technical Education as a Demonstrator in Chemistry and Physics on 11.7.1955. Thereafter, the petitioner was promoted as Assistant Lecturer in Chemistry on 16.11.1956. Gujarat Public Service Commission, thereafter, selected the petitioner for the post of Lecturer on 30.4.1964.

2.2 In the year 1978, the petitioner was working as Lecturer at L.D. Engineering College, Ahmedabad. At that time one Mr. P.D. Jhala, Professor of Chemistry, was due to retire on 31.10.1978. Therefore, the petitioner was directed to take over charge from Professor, Mr. P.D. Jhala, on 20.10.1978.

2.3 The Department of Technical Education issued a notification dated 27.2.1979 by which the petitioner was transferred and promoted to officiate as Assistant Professor of Chemistry in class I vice Professor Mr. P.D. Jhala with immediate effect. The petitioner further states that the Government by Resolution dated 25.10.1977 after examination of the recommendations of the Government of India, revised the pay scale of teachers in Engineering Colleges. As far as the post of Professor of non-technical subject was concerned, it was stated that the post was to be redesignated as Assistant Professor along with two other posts, namely, Associate Professor and reader and redesignated the post of Professor as Assistant Professor. Therefore, all the three posts were merged in post at the time of considering University Grants Commission's Scale for the State Government teachers and the Government took decision to redesignate the posts vide the said Resolution. By the Government Notification dated

27.2.1979 it is stated that consequent upon the retirement of Shri Jhala the post of Professor vacated by him gets itself converted into Assistant Professor as per provisions continued in G.R.E.D. No. TEM/1174/36329-GH dated 25.10.1977 and Mr. Majethia is promoted accordingly.

2.4 The petitioner continued to work on the re-designated post of Assistant Professor at L.D. Engineering College, Ahmedabad till 1981. In the year 1981, Professor K.K. Sata who was working as Professor of Chemistry at L.E. College at Morvi and the petitioner who was working on the redesignated post of Assistant Professor at L.D. Engineering College, Ahmedabad were mutually transferred. Thus, the post of Professor of Chemistry at L.E. College, Morvi and the re-designated post of Assistant Professor at L.D. Engineering College, Ahmedabad were treated as equivalent posts by the respondent authorities.

2.5 Thereafter, Professor Mr. K.K. Sata retired from the post of Professor of Chemical Engineering from L.D. Engineering College, Ahmedabad on 30.11.1986 and the petitioner who was working on the redesignated post of Assistant Professor, Chemical Engineering in L.E. College, Morvi was transferred and posted vice Professor Mr. Sata. The petitioner who was working on the redesignated post as Assistant Professor retired on 11.3.1988.

3. Mr. A.K. Clerk, learned advocate, stated that Mr. Sata and other Professors along with Dr. I.M. Pandya filed Special Civil Application No. 551 of 1978 praying for a writ of mandamus or other appropriate writ, order or directing the respondents to treat that part of the resolution dated 25.10.1977 passed by the Government of Gujarat, Education Department. Resolution No. TEM-1174/36329-Ch prescribes a different pay scale of Professors of non-technical subjects as violative of Articles 14 and 16 of the Constitution of India. The said matter was heard by this court (Coram: S.L. Talati, J) on 8.7.1983 and this court was pleased to allow the petition and this court directed the respondents namely the State of Gujarat and others to refix the salaries of all the five petitioners and give them the same pay scales as given to other Professors who are teaching engineering (Technical) subjects in the same colleges. After fixation, difference in salaries is required to be worked out and they are to be given pay scales of Rs. 1500-2500 from the date on which they have given those pay scales to the other professors of

Engineering subjects (technical) in the same college. This exercise should be completed within a period of three months from today.

4. The petitioner states that his case and the case of Mr. Sata are identical and therefore the petitioner is entitled to pay scale of Rs. 1500-2500 as aforesaid by the High Court in the said petition from 1.11.1978 and after March 1988 all the retirement and pensionary benefits may be given to him on the basis of the said pay scale.

5. The learned counsel for the petitioner further stated that because of redesignation of post by which the Government has decided to make the post of Assistant Professor from the post of Professor, though he has worked in the post of Professor, the Department has considered that in fact there was no post of Professor. In fact the petitioner has worked in the capacity as Professor and in fact the order dated 27.2.1979 also prescribed as under:

> "Consequent upon the retirement of Shri Jhala the post of Professor vacated by him gets itself converted as Assistant Professor as per provisions continued in C.R.E.D. No. TEM/1174/36329-Gh. dated 25.10.1977 and Shri Majethia is promoted accordingly."

6. It is the case of the petitioner that he was promoted vice Professor Shri Jhala at L.D. Engineering College, Ahmedabad, in 1978. The petitioner was performing all the duties and responsibilities of the post of Professor which Professor Shri Jhala was performing prior to his retirement at L.D. Engineering College, Ahmedabad. Thereafter, the petitioner was mutually transferred with Professor Shri Sata who was working as Professor of Chemistry at L.E. College, Morbi. Thereafter, on retirement of Professor Shri Sata from L.D. Engineering College, Ahmedabad, the petitioner was again transferred and posted vice Professor Sata at L.D. Engineering College, Ahmedabad. Thus, continuously from the date on which the petitioner took over the charge of the post of Professor of Chemistry from Professor Shri Jhala, the petitioner has been working as Professor of Chemistry and has been performing the duties and responsibilities of the said post. Professor Shri Sata who was also working as Professor and was also redesignated with the Government Resolution dated 25.10.1977 was given the pay scale of Rs. 1500-2500 pursuant to the judgement of this High Court in Special

Civil Application No. 551 of 1978 by which Professors of non-technical subjects were directed to be given similar pay scale as Professors of Technical subjects in Engineering Colleges. It was therefore submitted that since the petitioner was holding the post of Professor though redesignated as Assistant Professor and was performing all the duties and responsibilities of the post of Professor of Chemistry, the petitioner ought to be given pay scale of Rs. 1500-2500 with effect from 1.11.1978. Denial of the pay scale of Rs. 1500-2500 to the petitioner with effect from 1.11.1978 is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. It was further submitted by the petitioner that he has been performing the duties and responsibilities of the post of Professor since 1.11.1978. Professors Shri Jhala and Shri Sata were working as Professors of Chemistry and the petitioner has been performing the same duties and responsibilities which Professor Shri Jhala was performing upto 30.10.1978 and which Professor Shri Sata performed upto 30.11.1986. The petitioner has in fact worked as Professor at L.D. Engineering College, Ahmedabad and L.E. College, Morbi vice Professor Shri Jhala and Professor Shri Sata and therefore ought to have been paid salary which was paid to Professor Shri Sata since his promotion to the post of Professor. It is submitted that the petitioner's case is exactly similar to Professor Shri Sata which is evident from the fact that the petitioner was mutually transferred from Ahmedabad to Morbi in 1981 and later on the petitioner was transferred and posted vice Professor Shri Sata at L.D. Engineering College, Ahmedabad in February, 1987. Further the petitioner and Professor Shri Sata were holding the same post which is evident from the provisional seniority list of re-designated posts of Assistant Professors of Chemistry as on 1.1.1987 vide circular dated 23.6.1986. In view of the same, the petitioner ought to be given the same pay scale with effect from 1.11.1978 i.e. pay scale of Rs. 1500-2500.

8. Mr. B.Y. Mankad, learned A.G.P. appeared on behalf of the respondent. He has strongly objected to the submissions of the learned advocate for the petitioner and the prayer to be granted in this case. He has also filed affidavit in reply on behalf of respondent No. 3

9. In fact, in the affidavit it has been admitted that according to Sen Commission recommendation, Government of India had abolished the posts of (1)

Professor (2) Associate Professor and (3) Reader in Non-Technical subjects and redesignated the said posts as one post as "Assistant Professor". Therefore, all the three posts were merged into one post at the time of considering the issue of accepting the U.G.C. pay scales for State College teachers. The Government took decision accordingly to redesignate the posts vide Government Resolution dated 25.10.1977. It is the case of respondents that Shri Majeethia held one of the redesignated posts (i.e. Assistant Professor of Chemistry) with effect from 5.3.1979 and therefore he was not entitled to any of the reliefs.

10. It was further submitted that as Professor Shri Sata has filed petition before this court and obtained judgement and relief and as the petitioner failed to file petition and obtain judgement and relief at that time, he cannot get advantage of the judgement of this court today.

11. It was further submitted that in any view of the matter the judgement of this court in Special Civil Application No. 551 of 1978 is not applicable to the case of the petitioner because the petitioner was working on non-technical post and therefore he is not entitled for the same. The learned counsel for the respondent has relied on another judgement of this court in the case of G.C. PATEL VS. STATE OF GUJARAT reported in 1992(2) G.L.R. 1119.

12. The learned counsel for the respondent has further submitted that in this case the petitioner was due to retire on 30.11.1987 and ultimately he retired on 11.3.1988. The petitioner filed the petition in the year 1987. Though according to him the post was redesignated from Professor to Assistant Professor in 1977, he ought to have filed petition in 1977 or in any case he ought to have filed petition when Professor Shri Sata had filed petition before this court somewhere in 1978. As he has failed and neglected to file similar petition, he is not entitled to the same.

13. I have considered the rival submissions in this behalf. The argument of the learned counsel for the Government that the petitioner has not been posted as Professor is absolutely misconceived because according to the Government itself when they merged the post of Professor, Associate Professor and Reader into one post and redesignated it as "Assistant Professor", nobody can be posted as Professor because the post of professor is not existing. Therefore, the contention of the learned

counsel for the Government cannot be sustained. The fact remains that Professor Shri Sata worked as Professor and Professor Shri Jhala also worked as Professor and in that very post the petitioner worked.

14. In view of the judgement of this court in Special Civil Application No. 51 of 1978, the petition filed by the petitioner is required to be allowed. Therefore, the petition succeeds and it is accordingly allowed.

15. The learned counsel for the petitioner Mr. Abilash Clerk stated that it is no doubt true that the Government has filed Letters Patent Appeal No. 271 of 1984. However, in that very Letters Patent Appeal, a Division Bench of this court (Coram: N.H. Bhatt and M.B. Shah, (as he was then) JJ), after hearing the Government was pleased to pass interim order. Though the petition is allowed fully relying on the judgement in Special Civil Application No. 551 of 1978, in view of the fact that the Government has already filed Letters Patent Appeal in the said Special Civil Application No. 551 of 1978, so far as the final relief is concerned, I am passing the relief as per the order of the Division Bench so that in case the Government succeeds in the Letters Patent Appeal the interest of the Government will be protected. I direct the Government to make payment to the petitioner on condition that the petitioner furnishes security to the Government to the effect that in case the petitioner loses in this litigation, the petitioner will refund the said amount. The petitioner shall file an undertaking before this court. Rule is made absolute to the aforesaid extent. No order as to costs.

(K.M. MEHTA, J)

(pkn)